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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Woodrow W. Pearce

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

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3781

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/995,483	<b>Applicant(s)</b> PEARCE, WOODROW W.	
	<b>Examiner</b> ROBIN HYLTON	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,10,14-18,22,23,27,28,30,31,34 and 115 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,10,14,16-18,22,23,27,30,31,34 and 115 is/are rejected.
- 7) ☒ Claim(s) 3,15 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed November 9, 2009 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the slot formed across each plurality of ridges align with the named radius) are not recited in the rejected claims (see independent claims 1, 14, and 22). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

2. Applicant's arguments, see page 11, paragraph 4, filed November 9, 2009, with respect to the rejection(s) of claim(s) 27 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nishioka and Uhlig.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, a) the combination of a plurality of concentric ridges on a top portion inner surface of the cap **and** a liner fitted over the top portion inner surface (as set forth in claim 5) and b) the at least a slot formed across each must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

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even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

4. Claim 3 is objected to because of the following informality: “slot in consecutive ridge” should read -- slot in a consecutive ridge --. Appropriate correction is required.
5. Claim 115 is objected to because of the following informality: the preamble is inconsistent with the independent claim from which it depends. Appropriate correction is required.

#### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference

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claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 10, 18, and 31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 61, 62, 64, 65, and 67 of copending Application No. 11/041,925. Although the conflicting claims are not identical, they are not patentably distinct from each other because each discloses a liner and/or cap having a plurality of grooves/slots extending there across to create a gas path. The instant claims disclose the grooves to be intersecting grooves, whereas the co-pending application sets forth the slots as transversely extending. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the instant claims as intersecting grooves to provide a broader claim scope or to alternatively set forth the claims as transversely extending to provide a more precise indication of the inventive concept.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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***Claim Rejections - 35 USC § 102***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1, 4, 5, 14, 16, 17, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishioka et al. (US 4,036,386). The most comprehensive claim is presented below for examination purposes.

[Claim 14] A vented bottle cap system comprising:

a bottle (10) having a neck (11) having a rim (19) defining a mouth and threads (12) formed on the neck outer surface;

wherein a radius extends from a center of said mouth to an outer perimeter of said rim (in any direction);

a cap (22) having a top portion having an inner surface and an annular wall (13) extending from the top portion, the annular wall having threads (14) formed on its inner surface for threading onto the threads formed on the bottle neck, wherein when the cap is threaded onto the bottle neck a gas path is formed between the outer surface of the bottle neck and the inner surface of the annular wall;

a plurality of concentric circular ridges (17,18) formed on the inner surface of the top portion; and

a slot (defined by edge portions **D** and **F** and edges **A** and **C**, respectively) formed across each of said plurality of ridges, wherein when the cap is completely threaded onto the bottle neck, the plurality of ridges engage the bottle neck along said radius and the slots define a pathway for gas generated in the bottle to escape across the bottle neck rim and through the pathway (see Fig. 3).

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Regarding claim 4, the slots as defined by edge portions **D** and **F** and edges **A** and **C** are circumferentially spaced apart.

Regarding claims 5 and 17, a liner (15) having an opening (25) formed through the thickness of the liner.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka in view of Dubach (US 5,257,708).

Nishioka discloses the claimed cap except for the top portion being hingedly coupled to the annular wall. It is noted that protrusions 27 are provided on the liner disc to maintain its engagement with the cap skirt (col. 5, lines 58-65).

Dubach teaches it is known to provide a hinge coupling between the top portion and the annular wall of a cap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of hingedly coupling the top portion to the annular wall of Nishioka. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka in view of Peters (US 5,542,585).

Nishioka discloses the claimed cap except for a movable spout.

Peters teaches it is known to provide a cap having a downwardly depending plug seal and a movable spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a movable spout to the cap of Nishioka. Doing so allows for

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removal of the associated container contents without removal of the cap from the associated bottleneck.

12. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka.

Nishioka teaches the claimed method except is silent regarding solidifying the liquid to block the pathway through the groove.

The examiner takes Official notice that solidifying the liquid is a function of the property of the liquid material, since it known that a viscous liquid can and does solidify when found in small amounts in a cap groove.

13. Claim 115 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka in view of Uhlig (US 4,351,443).

Nishioka discloses the claimed bottle cap except for the cap top portion inner surface being a surface of an insert inserted against the cap top portion.

Uhlig teaches it is known to provide a sealing cap with a separate liner (Figs. 1-18) or alternatively without a liner (Figs. 19-26).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the cap of Nishioka as a separate cap and liner combination as taught by Uhlig. Doing so provides a known alternative sealing cap arrangement that allows for retrofitting a standard cap with a venting liner.

14. Claims 27, 30, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka in view of Uhlig (US 4,351,443). The most comprehensive claim is presented below for examination purposes.



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Nishioka discloses a vented bottle cap system comprising:

a bottle (10) having a neck (11) having a rim (19) defining a mouth and threads (12) formed on the neck outer surface, wherein a radius extends from a center of the mouth to an outer perimeter of the rim;

a cap (22) having a top portion having an inner surface and an annular wall (13) extending from the top portion, the annular wall having threads (14) formed on its inner surface for threading onto the threads formed on the bottle neck, wherein when the cap is threaded onto the bottle neck a gas path is formed between the outer surface of the bottle neck and the inner surface of the annular wall;

a plurality of concentric ridges (17,18) formed an inner surface of the cap top portion, wherein when the cap is completely threaded onto the bottle neck, the plurality of ridges contact the bottle neck rim and along the radius; and

at least a slot (defined by edge portions **D** and **F** and edges **A** and **C**, respectively) in each ridge.

Thus, Nishioka discloses the claimed bottle cap except for the cap top portion inner surface being a surface of a disc inserted against the cap top portion, wherein the disc is made of a material being at least semi-hard fitted over the top portion inner surface, the disc having a first surface opposite a second surface, wherein the first surface faces the top portion inner surface such that the ridges are on the second surface of the disc.

Uhlig teaches it is known to provide a sealing cap with a separate liner (Figs. 1-18) or alternatively without a liner (Figs. 19-26).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the cap of Nishioka as a separate cap and liner combination as taught by Uhlig.

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Doing so provides a known alternative sealing cap arrangement that allows for retrofitting a standard cap with a venting liner.

***Allowable Subject Matter***

15. Claims 3, 15, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Claims 10, 18, and 31 would be allowable if rewritten or amended to overcome the rejection(s) under non-statutory double patenting, set forth in this Office action.

***Conclusion***

17. In view of the new grounds of rejection to claims 27, 30 and 34, this Office action is made non-final.

18. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

20. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice

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may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720/80 will be promptly forwarded to the examiner.

21. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday, Tuesday, Thursday, and Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

May 25, 2010

/Robin A. Hylton/  
Robin A. Hylton  
Primary Examiner GAU 3781